



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	Chapter 135
Regulation Title:	Family Planning Waiver Services
Action Title:	Family Planning Services
Date:	

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

DMAS' emergency regulations to implement the Family Planning Demonstration Waiver (the "Waiver") (approved by CMS on July 22, 2002), were published in the Virginia Register on August 16, 2002. Item 325 M of the 2002 *Acts of Assembly* (the "Acts") requires DMAS to pay for extended family planning services within 90 days of federal approval of the Waiver. Since service payments must begin less than 280 days from the effective date of the *Acts*, DMAS has the authority, pursuant to 2.2-4011 to issue emergency regulations to implement the Waiver. Upon review of the emergency regulations previously issued by DMAS, in part pursuant to comments from advocacy groups and other state agencies, DMAS is issuing revised emergency

regulations to supersede the emergency regulations published in the Virginia Register on August 16, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The Code of Virginia §§ 32.1-324 and 32.1-325; 42 U.S.C. §1369 provide the legal authority to administer the Medicaid Program.

The Code of Virginia (1950) as amended, §32.1-325 grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (as amended by the 1999 Virginia Acts of Assembly, Chapter 1024 (H2717) required the BMAS to seek from CMS, approval of a waiver to cover family planning services for a longer postpartum period of time than is now required by federal law. The Code of Virginia (1950), as amended, in §32.1-324, grants the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements.

Section 1115(a) of the Social Security Act (42 United States Code §1315) provides the Secretary of Health and Human Services the authority, through the Centers for Medicare and Medicaid Services (CMS), to waive certain federal Medicaid requirements for demonstration projects that are "likely to assist in promoting its objectives." Furthermore, certain costs associated with these demonstration projects, which otherwise would not be permissible, the Secretary may deem permissible for the duration of the project.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The purpose of the Family Planning Demonstration Waiver is to provide family planning waiver services for 24 months postpartum for women who received a Medicaid reimbursed pregnancy related service (excluding aliens whose labor and deliveries were paid for by Medicaid as an emergency medical service). Absent the Family Planning Demonstration Waiver, DMAS is permitted by federal law to extend Medicaid eligibility to women who qualified for Medicaid solely due to pregnancy for a maximum of 60 days postpartum.

DMAS has reviewed the previously issued emergency regulations and has made certain changes for purposes of clarity as well as certain changes relating to eligibility. These change include the following: (1) clarifying that women who were enrolled in Medicaid while pregnant and who received a Medicaid reimbursed pregnancy-related service are eligible for family planning waiver services; and (2) clarifying that women who do not meet the alien eligibility requirements for full Medicaid coverage are not eligible to receive family planning waiver services.

The demonstration waiver regulations superseded by this action are 12 VAC 30 Chapter 135.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Due to the legislative mandate, the agency has no discretion in whether or not to implement this special service or in the service design due to the highly prescriptive nature of the legislation. However, the agency will consider, to the extent possible, public comments.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Under current policy, women who were enrolled in Medicaid solely due to pregnancy lose their Medicaid eligibility after 60 days postpartum (assuming they do not meet any other eligibility category's requirements). They also lose access to Medicaid funded health care (including family planning) services. These women will have access to publicly funded family planning waiver services for an additional 22 months upon CMS approval of the demonstration waiver and the completion of the Administrative Process Act.